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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

STEVEN FEHER,

Plaintiff,

vs.

SCOTT J. FAUX, an individual;
FAUX, WALKER, & JONES, PLLC, a
Utah professional limited liability
company; and BARNEY, MCKENNA
& OMSTEAD, PC, a Utah professional
corporation;

Defendants

Case No.:

COMPLAINT FOR:

- 1. BREACH OF FIDUCIARY DUTY**
- 2. NEGLIGENCE**

[Demand For Jury Trial]

Plaintiff, STEVEN FEHER, sues defendants and alleges:

1. This case involves attorneys who took an undisclosed \$100,000 kickback from an insurance broker in exchange for recommending completely inappropriate life insurance policies to their client as part of an improper financial plan. They continued to cover up the fact that the policies and the overall financial plan never should have been recommended or purchased in the first place. The truth was only discovered when Defendant Faux admitted the kickback under oath

1 in deposition. The consequences of these breaches of fiduciary duties were that
2 Plaintiff had most of his life's savings wiped out in the improper transactions.

3 2. Plaintiff is an individual who resides in Los Angeles, California.

4 3. Defendant SCOTT J. FAUX (“**Faux**”) is an individual and a resident
5 of the State of Utah. He is an attorney licensed to practice in the State of Utah and
6 maintains his practice there. He is also a CPA, but at all times referred to herein,
7 he was practicing law.

8 4. Defendant FAUX, WALKER, & JONES, PLLC (the “**FWJ FIRM**”)
9 is a Utah professional limited liability company with its principal place of business
10 in Utah. Scott Faux is a principal of the firm and has been since its formation in
11 2012. Based upon information and belief, at no time material to this complaint did
12 the FWJ Firm have any attorneys who were licensed to practice in California, the
13 state in which Feher resided at the time the FWJ Firm provided him legal services.

14 5. Defendant BARNEY, MCKENNA & OMSTEAD, PC (the “**BMO**
15 **Firm**”), is a Utah professional corporation with its principal place of business in
16 the State of Utah. Based upon information and belief, at no time material to this
17 complaint did the BMO Firm have any attorneys who were licensed to practice in
18 either California or Hawaii, the two states in which Feher resided at the time the
19 BMO Firm provided him legal services. Faux was an attorney associated with,
20 employed by and/or a partner of the BMO Firm and providing services with the
21 BMO Firm from 2005 until 2012.

22 6. Mr. Feher is an inventor who worked for decades on an invention
23 which finally began to provide substantial income around 2005.

24 7. Around that time, Mr. Feher saw an advertisement by Faux and the
25 BMO Firm. Through the advertisement, they offered to provide legal services
26 relating to financial planning and tax advice. Mr. Feher responded to the
27 advertisement, whereupon Faux and BMO began providing Mr. Feher legal
28

1 services, including tax planning, financial planning, corporate planning and
2 preparation of tax returns.

3 8. Mr. Feher had absolutely no connection to the State of Utah, did not
4 live in Utah, and had no business dealings whatsoever in the State of Utah. Mr.
5 Feher has never been to Utah.

6 9. Mr. Feher was not sophisticated in any of the matters for which Faux
7 and the BMO Firm represented him. Prior to 2005, Mr. Feher never earned
8 substantial income to worry about tax or financial planning. Mr. Feher relied on
9 Faux and the BMO Firm for their legal advice and legal services.

10 10. As part of those services, Faux and the BMO Firm reviewed Mr.
11 Feher's finances and prepared his tax returns. They were very familiar with his
12 income and his income streams, which came from patent royalties for his
13 inventions.

14 11. In 2008, Faux advised Mr. Feher that because substantially all of the
15 income he was earning came from one of his patented inventions would end in the
16 first quarter of 2014, Mr. Feher needed to create a financial investment plan now
17 and invest his money in order to generate a return of \$20,000 or more per month
18 starting in the second quarter of 2014 if he wished to continue his lifestyle. Mr.
19 Feher desired advice and counsel in this regard.

20 12. As part of providing such advice to Mr. Feher, in December, 2008,
21 Faux and an insurance broker named Carpenter flew to Hawaii, where Mr. Feher
22 lived at the time, to meet with him. They intended to sell him a high value life
23 insurance plan for millions of dollars as the investment vehicle suitable to his
24 situation to generate \$20,000 per month after his patent income ran out.

25 13. At the meeting, Faux "recommended" to Mr. Feher that he buy a \$16
26 million Penn Mutual Life Insurance policy because, he said, it would allow him to
27 build equity in the policy with his current resources and then borrow against it after
28 his patent income stopped, so that he would be able to withdraw at least \$20,000 a

1 month for the rest of his life. At that time, Mr. Feher had some awareness of
2 annuities, but had no experience whatsoever with life insurance or life insurance as
3 an investment vehicle. Faux and Carpenter told Mr. Feher that the life insurance
4 plan they were recommending was, “better than an annuity.” The commission for
5 selling a \$16 million life insurance policy is enormous, often in excess of the
6 entirety of the first year’s premium; the commission for selling an annuity pales by
7 comparison.

8 14. Unbeknownst to Mr. Feher, Faux had a business arrangement with
9 Carpenter to receive \$100,000 in kickbacks if Carpenter sold the life insurance
10 policy to Mr. Feher.

11 15. Despite recommending the policy to receive a referral fee, Faux and
12 the BMO Firm conducted no investigation, evaluation or analysis about the
13 suitability of the policy for Mr. Feher’s needs. Neither Faux nor BMO informed
14 Mr. Feher that it had not independently investigated and determined the suitability
15 of the proposed life insurance for Mr. Feher’s needs and was merely repeating
16 what they had been told by Carpenter to receive the fee. Mr. Feher was led to
17 believe that Faux and BMO had in fact done so and that as a result of that effort
18 Carpenter was selected as the sales person to achieve the goals Faux and the BMO
19 Firm has developed. Mr. Feher reposed a great deal of trust and confidence in
20 Faux and BMO as his counsel and trusted advisors, and had no awareness or
21 relationship with Carpenter who was brought by Faux to the first meeting in
22 Hawaii mentioned above. Carpenter would receive \$400,000 as a commission on
23 the policy in the first year alone.

24 16. The fact is, the Penn Mutual Life Insurance policies (and the
25 additional policies which would follow) were utterly inappropriate for Mr. Feher’s
26 needs, would not perform as represented, could not be afforded and were otherwise
27 totally and completely unnecessary. The policy would not return \$20,000 a month
28 when Mr. Feher’s income ran out; instead, Mr. Feher would be required to pay

1 premiums after a point in time Faux knew Mr. Feher would have no income. Mr.
2 Feher had no family, no children, no spouse, nor living parents and had absolutely
3 no need for life insurance. Mr. Feher had no one on whom to bestow the enormous
4 death benefit and had no interest in death benefits or any sort of testamentary
5 transfer. Mr. Feher was only interested in his financial security during his lifetime.
6 He purchased the life insurance because Faux and the BMO Firm advised him that
7 he needed to do so to be able to fund his lifestyle after his patent expired and his
8 income ran out in the first quarter of 2014.

9 17. Neither Faux nor the BMO Firm informed Mr. Feher that they had no
10 independent opinion about the appropriateness of the insurance policy or that they
11 were earning a commission of \$100,000 on the sale of the policy. They did not
12 provide to Mr. Feher any disclosure of potential and actual conflicts of interest, nor
13 obtain any waiver of conflicts of interest.

14 18. Mr. Feher purchased the life insurance based upon Faux and BMO's
15 recommendation and followed Faux's advice and counsel with respect thereto.
16 Essentially, Mr. Feher did what Faux told him to do in this regard.

17 19. In 2010, Faux and Carpenter visited Mr. Feher again, this time in Los
18 Angeles, whereupon Faux recommended that Mr. Feher purchase an *additional*
19 \$10 million Penn Mutual Life Insurance policy, bringing the total up to \$26 million
20 in life insurance. According to Faux and Carpenter, this purchase would increase
21 the amount of return Mr. Feher would get when he started needing the money after
22 his income ran out in the first quarter of 2014.

23 20. In reality, the policies were utterly unsuitable for the purpose Mr.
24 Feher requested or required. They had continuing premiums of at least \$750,000
25 per year and, in addition, required Mr. Feher to pay interest on the sums borrowed
26 against them. This plan never could have achieved the result Faux promised and
27 the very reason Faux purportedly recommended the policy. Further, Mr. Feher did
28 not need a life insurance policy since he had no spouse, no children, no

1 dependents, nor any close relatives. He had no one to leave any death benefits to,
2 all of which Faux and the BMO Firm well knew. Mr. Feher had not even prepared
3 a will or a trust or any other testamentary instrument to dispose of the enormous
4 death benefit should he die. Had he passed, the death benefit would have gone to
5 some remote relative Mr. Feher did not know or escheated to the state.

6 21. As part of the financial plan, around 2009 and 2010, Faux advised Mr.
7 Feher that he now needed to set up a complicated insurance based financial
8 planning scheme that involved creating a captive insurance company, creating a
9 separate limited liability company to own each of Mr. Feher's patents, and having
10 each LLC purchase insurance from the captive insurance company. The captive
11 insurance company would invest the "premiums" (which was money funded by
12 Mr. Feher) into the Penn Mutual life insurance policies which, according to Faux
13 and the BMO Firm, were on track to build sufficient value by the second quarter of
14 2014 that Mr. Feher would be able to borrow against them and take out a minimum
15 of \$20,000 per month for the rest of his life.

16 22. According to Faux and the BMO Firm, the captive insurance scheme
17 was necessary and advisable because it would avoid tax payments that would
18 otherwise be due and allow the funds reaped from the substantial tax savings to be
19 invested into the life insurance policies, thus building equity faster and providing
20 an even better return. Once again, Mr. Feher, trusting and relying on the advice
21 and counsel of Faux and BMO, did as they directed in this regard.

22 23. To carry out the financial plan, Faux established more than a dozen
23 business entities including limited liability companies and corporations, hired third
24 parties as consultants to carry out various tasks related to setting up a captive
25 insurance company, provided opinion letters for purposes of obtaining the
26 insurance policies and also legitimizing the insurable interest for the captive
27 insurance company, and hired an accountant with which he regularly worked to
28 handle bookkeeping and accounting for the financial plan. Faux gave himself an

1 interest in some of the entities and he named his accountant as a manager of most
2 of them. In other words, Faux either directly or through his accountant controlled
3 the entire enterprise on behalf of Mr. Feher as lawyer and his fiduciary. Mr. Feher
4 lacked the experience or business sophistication to understand the financial plan or
5 manage it himself. He relied upon Faux, who recommended, designed and set up
6 the complex plan. Mr. Feher followed Faux's advice.

7 24. Unbeknownst to Mr. Feher, the entire plan was not suitable for his
8 needs. First, it was set up to service premiums on the Penn Mutual policies, which
9 never could have generated the income required. Second, the plan was extremely
10 expensive to create and maintain. Any tax benefit was lost both because of the
11 expense of the enterprise and because any amounts saved were then invested into
12 the bogus insurance policies.

13 25. In 2011, Faux resigned as president of the captive insurance company
14 and appointed Carpenter (the insurance broker) as president in his place.

15 26. In early 2012, Faux assisted Carpenter in persuading Mr. Feher to
16 purchase a "replacement" insurance policy from Aviva Life Insurance for a total
17 \$18 million in insurance coverage. The new policy was purportedly "better suited"
18 to obtain the income stream Mr. Feher required. Mr. Feher was told and lead to
19 believe that there were no additional costs to this new policy and all of the
20 premiums would be paid through the structure already established by Faux. Once
21 again, Mr. Feher did as Faux advised and recommended.

22 27. Unbeknownst to Mr. Feher, the change in policies was classic
23 churning that was extremely expensive. The surrender fee on one of the old
24 policies was \$228,000, and the other policy was simply allowed to lapse, so all of
25 its value was lost. The new policy had even higher premiums than the old policies.
26 In no way could the new policy serve to meet Mr. Feher's needs, nor could he
27 afford them. He didn't need life insurance. Rather, the sale was motivated solely
28 by the desire to generate additional commissions. In or around April of 2012, Faux

1 formed a new law firm, the FJW Firm, and continued to provide legal advice and
2 counsel to Mr. Feher through his new law firm.

3 28. In 2014, Mr. Feher was informed by another insurance broker that the
4 policies he had been sold were not suitable for his needs. He expressed these
5 concerns to Faux, who continued to act as Mr. Feher's attorney and advised him to
6 send inquiries to Carpenter. Faux even told him what to say.

7 29. Faux never informed Mr. Feher that Faux (and through him, his new
8 law firm the FWJ Firm) had a deep conflict of interest in providing such advice,
9 nor did they advise Mr. Feher to seek independent legal counsel. Faux did not
10 inform Mr. Feher that he had not vetted, analyzed or reviewed the insurance
11 policies but continued to pretend that he was acting on behalf of Mr. Feher, in his
12 best interest, when in fact Faux was only giving "advice" to protect himself and his
13 firms. Faux failed to inform Mr. Feher that the entire insurance scheme was bogus.
14 Mr. Feher, unaware, continued to rely on and have trust and confidence in Faux's
15 advice.

16 30. Faux and the FWJ Firm continued to advise Mr. Feher how to proceed
17 with respect to the insurance policies into 2014, but the advice was ineffectual. At
18 no time did Faux and the FWJ Firm disclose the \$100,000 kickback Faux had
19 participated in to sell the policies in the first place. Had they done so, Mr. Feher
20 would have sought independent legal advice.

21 31. In the first quarter of 2014, Mr. Feher's income from his patent ran
22 out and he had no source of income to pay continuing premiums for the insurance
23 policy, just as Faux had known would be the case when he recommended the life
24 insurance investments to Mr. Feher.

25 32. In 2014, the Aviva life insurance policy lapsed. In other words, the
26 insurance investment was a total failure for its intended purposes. It could never
27 have generated at least \$20,000 in income to Mr. Feher. Rather, it required the
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1 payment of a million dollars per year just to keep it in force. Insurance Mr. Feher
2 did not need.

3 33. Mr. Feher filed a lawsuit against the broker and the insurance
4 companies for return of his premiums. Shortly before trial in 2015, the deposition
5 of Faux was taken in that case. At the deposition, Faux admitted taking \$100,000
6 from Carpenter (as a fee for assisting in selling the policy to Mr. Feher.)

7 34. Mr. Feher settled with the insurance carriers in that case for a partial
8 return of his premiums. He seeks the balance of his damages in this case, and
9 other damages based upon defendants' breaches of their fiduciary duties as his
10 attorneys and their carelessness in representing him.

11 **FIRST CAUSE OF ACTION**

12 **(Breach Of Fiduciary Duty against all defendants)**

13 35. Plaintiff incorporates paragraphs 1 through 34 as if re-alleged herein.

14 36. Every lawyer owes a fiduciary duty to his client, and among the
15 fiduciary duties of a lawyer is to act and advise in the client's best interest,
16 represent each client competently and with undivided loyalty.

17 37. By taking the acts alleged above, Defendants each breached their
18 fiduciary duties to Plaintiff.

19 38. As a direct and proximate result of Defendants' breaches of fiduciary
20 duties, Plaintiff was damaged in the amount of the premiums, fees and expenses he
21 paid in connection with the insurance/investment plan, and other damages, (less
22 any amounts recovered from other parties), according to proof at trial.

23 39. Defendants' acts were reprehensible, fraudulent and in blatant
24 violation of law and policy inasmuch as Defendants were well aware of their duties
25 as Plaintiff's attorney, his reliance upon them, Plaintiffs' financial circumstances
26 and the dire consequences that would befall Plaintiff if his life savings were
27 exploited in the manner described above, and they intended to and did personally
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1 and substantially benefit at Plaintiff's expense. Wherefore, Plaintiff is entitled to
2 punitive and exemplary damages.

3 **SECOND CAUSE OF ACTION**

4 **(Negligence against all defendants)**

5 40. Plaintiff incorporates paragraphs 1 through 34 as if re-alleged herein.

6 41. As part of an attorney's duty to his or her client, the attorney has an
7 obligation to use reasonable care and skill in carrying out the attorney's
8 representation.

9 42. Defendants and each of them breached their duties by doing the acts
10 alleged hereinabove negligently.

11 43. As a direct and proximate result of Defendants breaches of their
12 duties, Plaintiff was damaged in the amount of the premiums, fees and expenses he
13 paid in connection with the insurance/investment plan, and other damages, (less
14 any amounts recovered from other parties), according to proof at trial.

15 WHEREFORE, Plaintiff prays for judgment as follows:

16 1. Compensatory damages in the amount of \$4,500,000 and according to
17 proof at trial;

18 2. Exemplary and punitive damages;

19 3. Interest;

20 4. Costs;

21 5. Attorney's fees pursuant to California Code of Civil Procedure
22 §1029.8(a); and

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6. Such other and further relief as the Court may deem just and proper.

Dated: December 23, 2015

Respectfully submitted,

_____/S/_____
Steven Morris, Esq.
Turner Aubert & Friedman, LLP
Attorneys for Plaintiff
Steven Feher

Plaintiff hereby demands a jury trial.

Dated: December 23, 2015

Respectfully submitted,

_____/S/_____
Steven Morris, Esq.
Turner Aubert & Friedman, LLP
Attorneys for Plaintiff
Steven Feher